

SUPERIOR COURT CRIMINAL DOCKET
(as of 06/24/1999)

Page 1

State of Delaware v. SHERMAN A CARTER DOB 08/15/1950
 State's Atty: FERRIS W WHARTON , Esq. AKA: NICK CARTER
 DEFENSE ATTY: PRO SE , Esq. NICK CARTER

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	303X6881DI	IN93090845	BURGLARY 2ND	NOLP	05/25/1994
002	303X6881DI	IN93090846	PDWDCF	NOLP	05/25/1994
003	303X6881DI	IN93090847	PDWBPP	NOLP	05/25/1994
004	303X6881DI	IN93090848	CR.MIS.500-1500	NOLP	05/25/1994
005	303X6881DI	IN93090849R1	CCDW	TG	06/28/1994
006	303X6881DI	IN93090850R1	POSS.W/I/D NARC	TG	06/28/1994
007	303X6881DI	IN93090851R1	PDWBPP	TG	06/28/1994
008	303X6881DI	IN93090852	POS/DEL 1000 FT	NOLP	08/04/1994
009	303X6881DI	IN93090853	ASSAULT 1ST	NOLP	08/04/1994
010	303X6881DI	IN93090854	PDWDCF	NOLP	08/04/1994
011	303X6881DI	IN93090855	PDWBPP	NOLP	08/04/1994
012	303X6881DI	IN93091409	PDWDCF	NOLP	08/04/1994
013	303X6881DI	VN9309084901	VIOL O/PROBATN	GLTY	05/28/1997
014	303X6881DI	VN9309085001	VIOL O/PROBATN	GLTY	05/28/1997
015	303X6881DI	VN9309085101	VIOL O/PROBATN	GLTY	05/28/1997
019	303X6881DI	VN9309085102	VIOL O/PROBATN	GLTY	09/16/1997
020	303X6881DI	VN9309085103	VIOL O/PROBATN	GLTY	12/16/1997

No.	Event	Date	Event	Judge
	Event			
	WARRANT AND COMMITMENT	09/03/1993		
	90 24000.00 100			
	PRELIMINARY HEARING HELD	09/03/1993		
	MUNICIPAL COURT	09/15/1993		
	CASE FILED	09/16/1993		
			KDP	
1	TRUE BILL	09/27/1993		
	CONTROL FOR REPRESENTATION CALENDAR-ARRAIGNED BY 10C	10/06/1993		
	CONTROL FOR REPRESENTATION CALENDAR-ARRAIGNED	10/08/1993		
	NOTICE SERVICE/ACKNOW.RECEIPT-DISCOVERY	10/19/1993		
	CRIMINAL TRIAL CALENDAR - RESCHEDULED	11/02/1993		
	011994			
2	MOTION TO SEVER	11/02/1993		
	(PANKOWSKI, ESQ.)		KDP	



3	11/10/1993 OFFICE CONFERENCE RE: MTNSEV. MTN.IS GRANTED. COUNTS 1 THRU 4 TO BE SEVERED. COUNTS 5 THRU 12 TO BE TRIED SEPARATE. (PANKOWSKI, ESQ.) KDP	HERLIHY JEROME O.
4	11/17/1993 DEFENDANT'S LETTER	DCB
5	11/17/1993 LETTER (TO ATTYS.) REGARDING SEVERANCE. AND SCHED.OF TRIALS.	HERLIHY JEROME O.
6	11/17/1993 ORDER COUNTS I THRU IV ARE SEVERED & SHALL BE SET DOWN FOR TRIAL 1ST & THAT COUNTS V THRU XII SHOULD BE KEPT TOGETHER & SHALL BE TRIED ON A SUBSEQUENT DATE. KDP	HERLIHY JEROME O.
7	12/02/1993 DEFENDANT'S LETTER	DCB
8	12/07/1993 MOTION FOR REDUCTION OF BAIL EDWARD C. PANKOWSKI,JR.,ESQ. KLT	
	12/21/1993 MOTION FOR REDUCTION OF BAIL (#004) DENIED KLT	TOLIVER CHARLES H. IV
9	12/22/1993 DEFENDANT'S LETTER	DCB
	01/05/1994 STATE'S WITNESS SUBPOENA ISSUED	
10	01/12/1994 REFERRAL MEMO ED PANKOWSKI,ESQ. DCB	BARRON NORMAN A.
	01/12/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED	
11	01/18/1994 REFERRAL MEMO ED PANKOWSKI,ESQ. DCB	BARRON NORMAN A.
	01/19/1994 CRIMINAL TRIAL CALENDAR - RESCHEDULED	TOLIVER CHARLES H. IV
12	01/31/1994 DEFENDANT'S LETTER	DCB
13	01/31/1994 REQUEST FOR APPOINTMENT OF COUNSEL DCB	
14	02/03/1994 MOTION FOR APPOINTMENT OF COUNSEL PRO`SE KLT	
15	02/08/1994 ORDER TO COURT APPOINT COUNSEL JEROME M.CAPONE,ESQ. DCB	BARRON NORMAN A.
16	02/10/1994	

ACKNOWLEDGMENT SIGNED BY COUNSEL
JEROME M. CAPONE, ESQ. DCB
02/10/1994 NOTICE OF SERVICE - DISCOVERY REQUEST
17 02/25/1994 COOCH RICHARD R.
MEMORANDUM
TO JEROME CAPONE, ESQ., REFERRING
THE ATTACHED PRO SE LETTER DATED
012794, TO HIM AS COUNSEL OF
RECORD FOR WHATEVER ACTION HE
DEEM APPROPRIATE. DCB
03/18/1994 STATE'S WITNESS SUBPOENA ISSUED
44 03/22/1994 LETTER
(DATED 022594) TO DEFENDANT FROM
MARGARET L. NAYLOR: THE CHIEF
JUSTICE HAS DIRECTED ME TO INFORM
YOU THAT THE COURT ON THE
JUDICIARY WILL TAKE NO ACTION
WITH RESPECT TO YOUR DOCUMENT
DATED FEBRUARY 16, 1994, ENTITLED
"OBJECTION", AS YOUR DOCUMENT
CONCERNs THE ABOVE-CAPTIONED
MATTERS WHICH WERE CLOSED ON
FEBRUARY 10, 1994. KRS
03/24/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
18 03/24/1994 LETTER
DEFENDANT'S DF
03/30/1994 CRIMINAL TRIAL CALENDAR - RESCHEDULED COOCH RICHARD R.
19 04/03/1994 MOTION FOR REDUCTION OF BAIL
JEROME M. CAPONE, ESQ. DF
04/12/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
04/20/1994 STATE'S WITNESS SUBPOENA ISSUED
04/25/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED
20 04/27/1994 LETTER FROM DEFENDANT
TRIAL DATE VERIFICATION CM
04/28/1994 CRIMINAL TRIAL CALENDAR - RESCHEDULED TOLIVER CHARLES H. IV
05/03/1994 STATE'S WITNESS SUBPOENA ISSUED
21 05/06/1994 DEFENDANT'S LETTER
DCB
05/10/1994 ARRAIGNED, WAIVED READING, ENT PLEA N GLTY
05/10/1994 DIVERSION & CASE REVIEW-TRACK 2-RESCHEDULED
061694

	05/10/1994	CARPENTER WILLIAM C. JR.
	BAIL HEARING AND COMMITMENT 77 24000.00 010 MTNROB, GRANTED (#019) REDUCED TO \$24000 SECURED @10% DF	
22	05/13/1994 LETTER TO DEFT. CM	HERLIHY JEROME O.
23	05/19/1994 DEFENDANT'S LETTER REQUESTING DOCKET SHEET MV	
24	05/25/1994 NOLLE PROSEQUI IN93-09-0845 THROUGH -0848, WIT- AVAILABILITY. WJS	
25	05/26/1994 LETTER FROM DEFENDANT CM	
26	05/26/1994 LETTER TO DEFT CM	HERLIHY JEROME O.
27	06/07/1994 LETTER TO DEFT. TELLING HIM HE WILL BE PERMITTED TO ADDRESS THE COURT ON THE CONCERNS IN HIS LETTER ON 061694 THROUGH HIS ATTORNEY. CM	GOLDSTEIN CARL
	06/10/1994 STATE'S WITNESS SUBPOENA ISSUED	
	06/13/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED	
	06/15/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED	
	06/15/1994 DEFENDANT'S LETTER RECEIVED 06/16/94 KRS	
	06/20/1994 SHERIFF'S COSTS FOR SUBPOENA'S DELIVERED	
28	06/21/1994 LETTER FROM DEFENDANT CM	
29	06/22/1994 MOTION TO SUPPRESS JEROME M. CAPONE, ESQ. DF	
	06/27/1994 CRIMINAL TRIAL CALENDAR - TRIAL	CARPENTER WILLIAM C. JR.
30	06/27/1994 JURY TRIAL THRU 062894. STATE NOLLE PROSEQUI COUNTS 5,6,7,9,12. STATE'S MOTION TO AMEND COUNT 8 GRANTED. STATE'S MOTION IN LIMINE GRANTED. DEFT.'S MOTION TO WITHDRAW AS COUNSEL WAS DENIED. DEFT.'S MOTION FOR JUDGE- MENT OF ACQUITTAL OF CT. 8 DENIED JURY FOUND DEFT. GUILTY OF POSS. OF COCAINE-0850, CCDW-0849, AND	ALFORD HAILE L.

PDWBPP-0851. PSI ORDERED.
 SENTENCING 080494 AT 10:00 A.M.
 S/WHARTON, D/CAPONE, CR/LIEBOW
 CC/ROGERS. JURY SWORN. GR

06/28/1994
 PRESENTENCE INVESTIGATION ORDERED

31 07/13/1994
 DEFENDANT'S LETTER
 RECIEVED JULY 14, 1994_. REQUEST
 DOCKET SHEET EC

42 07/28/1994
 LETTER FROM DEFENDANT

DCB

08/04/1994 ALFORD HAILE L.
 SENTENCING CALENDAR - DEFENDANT SENTENCED

32 08/04/1994
 NOLLE PROSEQUI
 0852-0855 & 1409, RSN: PLED &
 SENT.ON 0849 & 0850.

33 08/04/1994 ALFORD HAILE L.
 SENTENCE

AS TO IN93090851 , TIS , THE
 DEFENDANT IS ADJUDGED GUILTY OF
 THE OFFENSE CHARGED.

THE DEFENDANT IS TO PAY COSTS OF
 PROSECUTION.

EFFECTIVE SEPTEMBER 4, 1993 THE
 DEFENDANT IS PLACED IN THE
 CUSTODY OF THE DEPARTMENT OF
 CORRECTION AT SUPERVISION LEVEL 5
 FOR A PERIOD OF 3 YEARS,
 INCLUDING CREDIT FOR ANY TIME
 PREVIOUSLY SERVED.

IF THE DEFENDANT IS PRESENTLY
 SERVING ANOTHER SENTENCE, THAT
 SENTENCE SHALL BE SUSPENDED UNTIL
 COMPLETION OF THIS SENTENCE.

AFTER SERVING 1 YEAR, THIS
 SENTENCE IS SUSPENDED FOR 2 YEARS
 AT LEVEL 4, INPATIENT DRUG
 TREATMENT PROGRAM.

UPON SUCCESSFUL COMPLETION OF
 LEVEL 4 INPATIENT TREATMENT
 PROGRAM, THIS SENTENCE IS
 SUSPENDED FOR THE BALANCE AT
 LEVEL 3.

THE DEFENDANT IS TO BE HELD AT
 SUPERVISION LEVEL 5 UNTIL SPACE
 IS AVAILABLE AT LEVEL 4.

AS TO IN93090849, TIS , THE
 DEFENDANT IS ADJUDGED GUILTY OF
 THE OFFENSE CHARGED.

THE DEFENDANT IS TO PAY THE COSTS
 OF PROSECUTION.

THE DEFENDANT IS TO PAY A FINE IN
 THE AMOUNT OF \$200.00 PLUS AN
 EIGHTEEN PERCENT SURCHARGE FOR

SERVED FROM 9/4/93

TO

11/30/94

*PLUS 30 days GT FOR
 LYRE WORK,*

FOR THE "VICTIM COMPENSATION FUND."

THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS.

THE NON-INCARCERATIVE PORTION OF THIS SENTENCE SHALL BE SERVED CONSECUTIVELY TO THE NON-INCARCERATIVE PORTION OF THE SENTENCE IMPOSED IN CR.A. NO. IN93090851. AS TO IN93090850, TIS, THE DEFENDANT IS ADJUDGED GUILTY OF THE OFFENSE CHARGED. THE DEFENDANT IS TO PAY THE COSTS OF PROSECUTION. THE DEFENDANT IS TO PAY A FINE IN THE AMOUNT OF \$ 200.00 PLUS AN 18% SURCHARGE FOR THE 'VICTIM COMPENSATION FUND' AND A 15% SURCHARGE FOR THE "SUBSTANCE ABUSE REHABILITATION, TREATMENT, EDUCATION AND PREVENTION FUND".

THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AT SUPERVISION LEVEL 5 FOR A PERIOD OF 3 YEARS.

THIS SENTENCE IS SUSPENDED FOR 3 YEARS AT LEVEL 2 .

THE NON-INCARCERATIVE PORTION OF THIS SENTENCE SHALL BE SERVED CONSECUTIVELY WITH THE NON-INCARCERATIVE PORTION OF THE SENTENCE IMPOSED IN CR.A.NO. IN93090849 .

AS TO ALL CHARGES THE FOLLOWING SPECIAL CONDITIONS OF SUPERVISION SHALL APPLY: THE DEFENDANT SHALL: PAY THE FINES, SURCHARGES AND COSTS ORDERED DURING THE PROBATIONARY PERIOD.

BE EVALUATED FOR SUBSTANCE ABUSE AND FOLLOW ANY DIRECTIONS FOR COUNSELING, TESTING OR TREATMENT MADE BY THE PROBATION OFFICER.

FOLLOW TREATMENT RECOMMENDATIONS OF EVALUATOR AND/OR PROBATION OFFICER.

D/CAPONE

S/KELSEY

CR/MILTON

CC/SPEAKMAN

KRS

08/10/1994

DEFENDANT'S LETTER

KRS

34

08/17/1994

NOTICE OF APPEAL
#314, 1994

DF

35 08/17/1994
 DIRECTIONS TO COURT REPORTER FOR TRANSCRIPT
 #314, 1994 DF

36 08/17/1994
 LETTER
 (SUPREME COURT) TO COURT REPORTER
 PURSUANT TO SUPREME COURT RULE 9
 (E)(IV), THE TRANSCRIPT MUST BE
 FILED WITH THE PROTHONOTARY NO
LATER THAN 092694 DF

37 08/23/1994
 MEMORANDUM
 THE ORDER OF 110793, ORDERING
 COUNTS 1 THROUGH IV OF THE ABOVE
 REFERENCED CASE BE SEVERED, SHALL
 BE RESCINDED DUE TO THE ENTRY OF
 THE ATTORNEY GENERAL'S NOLLE
 PROSEQUI ON THOSE CHARGES. IT IS
 SO ORDERED: DF

38 08/24/1994 ALFORD HAILE L.
 ORDER OF JUDGMENT KRS

39 09/02/1994 ALFORD HAILE L.
 AMENDED SENTENCE
 AS TO IN93090851, IN93090849,
 NOW THIS 2ND DAY OF SEPTEMBER,
 1994, IT IS THE ORDER OF THE
 COURT THAT THE SENTENCING ORDER
 OF AUGUST 4, 1994 IS HEREBY
 MODIFIED AND AMENDED AS SET FORTH
 BELOW:
 IN93-09-0851, AFTER SERVING 1
 YEAR, THIS SENTENCE IS SUSPENDED
 FOR 2 YEARS AT LEVEL 4, INPATIENT
 DRUG TREATMENT PROGRAM. THIS
 SENTENCE SHALL BE SUBJECT TO
 SENTAC POLICY #28.
 IN93-09-0849, THIS SENTENCE IS
 SUSPENDED FOR 2 YEARS AT LEVEL 2.
 SPECIAL CONDITION TO ALL CHARGES:
 SHOULD THE DEFENDANT RETURN TO
 THE CUSTODY OF THE DEPT. OF
 CORRECTIONS IN THE STATE OF
 PENNSYLVANIA TO COMPLETE ANY
 IMPOSED SENTENCE; UPON RELEASE
 FROM SUCH CUSTODY, DEFENDANT IS
 TO RETURN TO THE STATE OF
 DELAWARE TO SUCCESSFULLY COMPLETE
 THE TERMS OF CONDITIONS OF ANY
 OPEN PERIOD OF PROBATION. SHOULD
 DEFENDANT FAIL TO DO SO, A
 SUBSTANTIAL PERIOD OF
 INCARCERATION SHALL BE REIMPOSED.
 IN ALL OTHER RESPECTS, THE
 SENTENCING ORDER OF AUGUST 4,
 1994 SHALL REMAIN THE SAME. JB

40 10/04/1994

LETTER
 (SUPREME COURT) TO COURT REPORTER
 THE COURT IS IN RECEIPT OF YOUR
 LETTER 092994, REQUESTING AN
 EXTENSION OF TIME UNTIL 100794.
 THE COURT HAS DIRECTED ME TO AD-
 VISE YOU THAT YOUR REQUEST IS
 GRANTED. PLEASE FILE THE TRANS.
 ON OR BEFORE 100794. DF

41 10/07/1994 ALFORD HAILE L.
 TRANSCRIPT OF TRIAL
 JUNE 27, 28, 1994 DF
 43 10/17/1994
 LETTER
 (SUPREME COURT) TO PROTHONOTARY
 PURSUANT TO SUPREME COURT RULE 9
 (B) (I), THE RECORD W/TRANSCRIPT
 MUST BE FILED WITH THIS OFFICE NO
 LATER THAN 101794 DF
 42 10/19/1994
 RECORDS SENT TO SUPREME COURT DF
 43 10/25/1994
 RECEIPT RECORDS ACKNOWLEDGED BY
 SUPREME COURT DF
 12/13/1994
 LETTER FROM DEFENDANT
 DSC
 DSC
 44 02/14/1995 ALFORD HAILE L.
 LETTER
 "ASSESSMENT" FROM SUPERVISED
 CUSTODY UNIT, JESSIE L. WALLER,
 PROBATION/PAROLE OFFICER:
 I RECOMMEND THAT IN93090851 BE
 MODIFIED THAT MR. CARTER SERVE 6
 MONTHS AT LEVEL 3 AND FOLLOW
 RECOMMENDATION FROM SODAT FOR
 INTENSIVE OUTPATIENT TREATMENT.
 SO ORDERED 021395. KRS
 45 08/04/1995
 MANDATE AFFIRMED
 #314, 1994 DF
 46 08/15/1995
 MOTION FOR POST-CONVICTION RELIEF
 FILED PRO SE; REFERRED TO JUDGE
 ALFORD. WJS
 47 08/18/1995
 MEMORANDUM
 GIVING FERRIS WHARTON NOTICE OF
 THE FILING OF A MOTION FOR POST-
 CONVICTION RELIEF. WJS
 48 11/15/1995 ALFORD HAILE L.
 ORDER
 MOTION FOR POSTCONVICTION RELIEF
 IS DENIED. WJS
 49 12/14/1995

NOTICE OF APPEAL
#496, 1995 DF
 50 12/14/1995 DIRECTIONS TO COURT REPORTER FOR TRANSCRIPT
#496, 1995 DF
 51 12/26/1995 NOTICE OF APPEAL
(AMENDED) #496, 1995 DF
 52 12/27/1995 LETTER
(SUPREME COURT) TO PROTHONOTARY
PURSUANT TO SUPREME COURT RULE 9
(B) (II), THE RECORD MUST BE FILED
WITH THIS OFFICE NO LATER THAN
011696 DF
 53 12/28/1995 RECORDS SENT TO SUPREME COURT DF
 54 03/12/1996 MANDATE AFFIRMED DF
#496, 1995
 55 03/14/1996 VIOLATION OF PROBATION REPORT ALFORD HAILE L.
ISSUE SUMMONS KRS
04/03/1996
SUBPOENA(S) MAILED
 56 04/19/1996 GEBELEIN RICHARD S.
VOP SENTENCING CALENDAR, CONTINUED.
 57 04/23/1997 SUBPOENA(S) MAILED.
 58 04/23/1997 SUBPOENA(S) MAILED.
 05/07/1997 GEBELEIN RICHARD S.
VIOLATION OF PROBATION. VIOLATION RESCHEDULED FOR CONTESTED VOP.
 59 05/22/1997 SUBPOENA(S) MAILED.
 60 05/22/1997 SUBPOENA(S) MAILED.
 61 05/28/1997 GEBELEIN RICHARD S.
HEARING, CONTESTED V.O.P.,
DEFENDANT FOUND GUILTY AND SENTENCED IMMEDIATELY.
 62 05/28/1997 GEBELEIN RICHARD S.
VIOLATION OF PROBATION HEARING, AS TO VN93-09-0851-01
THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF PROBATION AND PROBATION IS HEREWITNESS REVOKED AND SENTENCE IMPOSED AS SHOWN HEREAFTER:
THE DEFENDANT SHALL PAY COSTS, FINES, AND/OR RESTITUTION
AS PREVIOUSLY ORDERED. EFFECTIVE AT THE END OF VN85-08-0681-01, THE
DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AT
SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS. AFTER SERVING -0-, THE
REMAINDER OF THIS SENTENCE IS SUSPENDED FOR 2 YEARS AT LEVEL 2. AS
TO VN93-09-0849-01, THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF
PROBATION AND PROBATION IS HEREWITNESS REVOKED AND SENTENCE REIMPOSED AS
SHOWN HEREAFTER. THE DEFENDANT SHALL PAY COSTS, FINES AND/OR
RESTITUTION AS PREVIOUSLY ORDERED. EFFECTIVE AT END OF VN93-09-0851-
01, THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF
CORRECTION AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS. AFTER
SERVING -0-, THE REMAINDER OF THIS SENTENCE IS SUSPENDED FOR 2 YEARS

NO JAIL TIME

AT LEVEL 2. THE SENTENCE IN VN93-09-0850-01 IS REIMPOSED TO RUN CONSECUTIVE TO 93-09-0849-01 FOR 2 YEARS AT LEVEL 2.

S/PELAIA
D/HILLIS
CC/BENNETT
CR/MASON

64	07/03/1997	GEBELEIN RICHARD S.
	CAPIAS ISSUED FOR EMERGENCY LEVEL IV HOLD WITHOUT BAIL UNTIL HRG.	
63	07/15/1997	
	VIOLATION OF PROBATION REPORT FILED.	
	08/20/1997	TOLIVER CHARLES H. IV
	VOP SENTENCING CALENDAR, CONTINUED (NO DATE GIVEN).	
65	09/16/1997	ALFORD HAILE L.
	SENTENCE: SIGNED ORDER FILED 10/14/97.	
66	09/16/1997	ALFORD HAILE L.
	CAPIAS RETURNED IN SUPERIOR COURT DEF SENTENCED	
	09/16/1997	ALFORD HAILE L.
	VIOLATION-OF-PROBATION HEARING HELD: PROBATION REVOKED AND DEFENDANT SENTENCED AS TO VN93-09-0851-02.	JUNE 27 TO SEP 17, 1997
67	12/02/1997	ALFORD HAILE L.
	CAPIAS ISSUED FOR EMERGENCY LEVEL IV HOLD WITHOUT BAIL UNTIL HRG. ON 121697 AT 9AM	
	12/16/1997	ALFORD HAILE L.
	VIOLATION-OF-PROBATION HEARING HELD: PROBATION REVOKED AND DEFENDANT SENTENCED AS TO	DEC 4, 1997 TO PRESENT.
68	12/16/1997	ALFORD HAILE L.
	CAPIAS RETURNED IN SUPERIOR COURT. DEF. SENTENCED	
71	12/16/1997	ALFORD HAILE L.
	SENTENCE: SIGNED ORDER FILED 02101998.	
69	01/02/1998	
	MOTION FOR MODIFICATION OF SENTENCE FILED. PRO SE - REFERRED TO JUDGE ALFORD.	
70	01/14/1998	GEBELEIN RICHARD S.
	TRANSCRIPT OF VOP HEARING FILED. MAY 28, 1997	
73	02/19/1998	
	MOTION FOR MODIFICATION OF SENTENCE FILED. PRO SE- REFERRED TO JUDGE ALFORD.	
72	02/23/1998	
	WRIT OF MANDAMUS FILED (PRO SE)	
74	03/02/1998	
	PETITION FOR A WRIT OF MANDAMUS #90, 1998	
75	03/10/1998	ALFORD HAILE L.
	ORDER: NOW, THEREFORE, IT IS ORDERED THAT DEFT'S MOTION FOR REDUCTION/MODIFICATION OF SENTENCE IS DENIED. SENTENCE WAS IMPOSED AFTER A VOP HEARING WAS HELD. ANY REQUEST FOR A CHANGE IN SUBSTANCE ABUSE PROGRAM MUST BE MADE BY THE WARDEN.	
76	04/15/1998	
	ORDER: (SUPREME COURT) NOW, THEREFORE, IT IS ORDERED THAT THE PETITION FOR A WRIT OF MANDAMUS IS DISMISSED.	
77	07/01/1998	
	MOTION FOR MODIFICATION OF SENTENCE FILED. RETURNED TO DEFT. - NOT SERVED ON A.G.	
78	07/15/1998	

MOTION FOR MODIFICATION OF SENTENCE FILED.

PRO SE - REFERRED TO JUDGE ALFORD.

79 07/21/1998

MOTION FOR CORRECTION OF ILLEGAL SENTENCE FILED

PRO SE - REFERRED TO JUDGE ALFORD.

REFERRED ON JULY 28, 1998.

80 08/14/1998

ALFORD HAILE L.

ORDER: NOW, THEREFORE, IT IS ORDERED THAT DEFT'S MOTION

FOR REDUCTION/MODIFICATION OF SENTENCE IS DENIED.

PURSUANT TO SUPERIOR COURT CRIMINAL RULE 35(), THE

COURT WILL NOT CONSIDER REPETITIVE REQUESTS FOR REDUCTION/MODIFICATION OF SENTENCE. SENTENCE WAS IMPOSED AFTER A VOP HEARING WAS HELD.

81 09/02/1998

ALFORD HAILE L.

NOTICE OF NON-COMPLIANCE TO RULE 61 (MOTION FOR POSTCONVICTION RELIEF) SENT TO DEFENDANT. THE MOTION SEEKS CORRECTION OF SENTENCE RATHER THAN COLLATERALLY ATTACKING THE JUDGMENT OF CONVICTION; SEE RULE 61(B) (2).

88 09/09/1998

LETTER FROM DEFENDANT, ENCLOSING A COPY OF A MOTION TO BE USED AS AN EXHIBIT IN PENDING CIVIL LITIGATION IN DISTRICT COURT.

82 10/30/1998

LETTER FROM DEFT TO SHARON AGNEW, PROY
RE:ENCLOSING COPY OF PETITION FOR WRIT OF MANDAMUS PRESENTED TO THE THIRD CIRCUIT COURT OF APPEALS.

83 10/30/1998

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS.

84 11/13/1998

LETTER FROM ELIZABETH CORMIER TO SHERMAN CARTER DCC
RE:PETITION FOR WRIT OF MANDAMUS AND MOTION TO PROCEED IN FORMA PAUPERIS WILL BE TRANSMITTED TO THE NEXT AVAILABLE PANEL OF THIS CT.

86 11/17/1998

PETITION FOR A WRIT OF MANDAMUS. #483, 1998

85 12/30/1998

ORDER: IN THE MATTER OF A WRIT OF MANDAMUS;
CARTER'S PETITION FOR A WRIT OF MANDAMUS FAILS TO INVOK THE ORIGINAL JURISDICTION OF THIS COURT.
CARTER HAS NOT DEMONSTRATED THAT THE IS ENTITLED TO ANY DUTY OWED BY THE SUPEIOR COURT, NOR HAS HE ESTABLISHED THAT THE SUPCOURT HAS ARBITRARILY REFUSED TO GRANT HIM RELIEF. IF AND WHEN CARTER FILES A CONFORMING RULE 61 MOTION AND THE SUPERIOR COURT ISSUES A FINAL DECISION ADVERSE TO CARTER, CARTER CAN CHALLENGE, ON APPEAL THE SUPERIOR COURT'S APPLICATION OF THE PROVISIONS OF RULE 61 IN HIS CASE. NOW, THEREFORE, IT IS ORDERED THAT THE PETITON FOR A WRIT O MANDAMUS IS DISMISSED.

87 01/04/1999

MOTION FOR MODIFICATION OF SENTENCE FILED.

PRO SE - REFERRED TO JUDGE ALFORD.

REFERRED ON 1/12/99.

89 01/04/1999

ALFORD HAILE L.

DEFENDANT'S LETTER FILED. LETTER TO JUDGE ALFORD RE: SENTENCING.

90 02/16/1999

DEFENDANT'S LETTER FILED. LETTER TO JUDGE ALFORD RE: SENTENCE.

91 03/04/1999

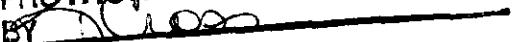
ALFORD HAILE L.

MODIFICATION OF SENTENCE. AS TO VN93-09-0851, THE SENTENCE IMPOSED ON

DECEMBER 16, 1997, IS MODIFIED AS FOLLOWS: DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPT. OF CORRECTIONS AT LEVEL 5 FOR TWO(2) YEARS. THE DEFENDANT SHALL BE GIVEN CREDIT FOR TIME PREVIOUSLY SERVED. IN ALL OTHER RESPECTS, THE SENTENCING ORDER OF DECEMBER 16, 1997 SHALL REMAIN THE SAME.

- 92 04/15/1999
DEFENDANT'S LETTER FILED.
93 06/11/1999
MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE - REFERRED TO JUDGE ALFORD.
REFERRED ON 6/15/99.
94 06/16/1999
MOTION FOR MODIFICATION OF SENTENCE FILED.
PRO SE - REFERRED TO JUDGE ALFORD.
REFERRED ON 6/23/99

→

CERTIFIED AS A TRUE COPY:
ATTEST: SHARON AGNEW
PROTHONOTARY
BY 

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF SHERMAN A.
CARTER FOR A WRIT OF
MANDAMUS.

No. 483, 1998

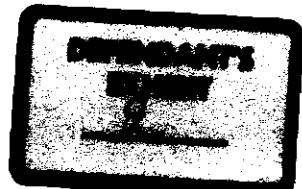
Submitted: November 30, 1998
Decided: December 9, 1998

Before VEASEY, Chief Justice, WALSH and HOLLAND, Justices.

ORDER

This 9th day of December 1998, upon consideration of the petition for a writ of mandamus filed by Sherman A. Carter ("Carter"), and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In June 1994, Carter was convicted in the Superior Court of possession of cocaine and two weapons offenses. Carter was sentenced to imprisonment followed by probation. Carter's conviction was affirmed on appeal. *Carter v. State*, Del. Supr., No. 314, 1994, Veasey, C.J., 1995 WL 439234 (July 18, 1995) (ORDER). Carter subsequently filed for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The Superior Court's denial of relief was affirmed on appeal. *Carter*



v. State, Del. Supr., No. 496, 1995, Hartnett, J., 1996 WL 145773 (Feb. 22, 1996) (ORDER).

(2) In May 1997, September 1997, and December 1997, Carter was adjudged guilty of violating his probation and was sentenced. Most recently in December 1997, Carter was sentenced to two years at Level V imprisonment. Carter did not appeal any of those convictions and sentences.

See In re Carter, Del. Supr., No. 90, 1998, Holland, J., 1998 WL 171110 (Mar. 25, 1998) (ORDER) (dismissing petition for writ of mandamus on basis that Carter did not challenge the May, September and December 1997 sentences in appeals to this Court). It appears from the Superior Court docket that in August 1998, the Superior Court denied a motion for reduction/modification of sentence that was filed by Carter. Again, Carter did not file an appeal. It further appears from the docket that in September 1998, the Superior Court issued a notice of non-compliance that returned a motion for postconviction relief that Carter had filed. *See Rule 61(B)(2)* (addressing content of Rule 61 motion).

(3) Carter's petition for a writ of mandamus filed in this Court, makes no mention of the Superior Court's notice of non-compliance that returned his Rule 61 motion. Rather, the petition, in general terms, takes

issue with the Superior Court's application of Rule 61. According to Carter, the "Judges of Superior Court are out of control[,]” and “[the Superior Court] feels that it has unbridled authority to create and recreate procedural restrictions whenever it deems appropriate to reach its desired results.” Carter, purporting to give “examples” of the Superior Court’s “procedural violations” of Rule 61, attaches decisions by this Court and the Superior Court in cases wholly unrelated to Carter’s Superior Court case. In his petition in this Court, Carter requests, on behalf of “anyone attempting review” under Rule 61, “the opportunity to regain a fair opportunity to seek relief, in the interest of justice.”

(4) A writ of mandamus is issued to compel a trial court to perform a duty only if it is shown that the complainant has a clear right to the performance of the duty at the time of the petition, no other adequate remedy is available, and that the trial court has arbitrarily refused to perform its duty.

In re Bordley, Del. Supr., 545 A.2d 619, 620 (1988). “[I]n the absence of a clear showing of an arbitrary refusal or failure to act, this Court will not issue a writ of mandamus to compel a trial court to perform a particular judicial function, to decide a matter in a particular way, or to dictate the control of its docket.” *Id.*

(5) Carter's petition for a writ of mandamus fails to invoke the original jurisdiction of this Court. Carter has not demonstrated that he is entitled to any duty owed by the Superior Court, nor has he established that the Superior Court has arbitrarily refused to grant him relief. If and when Carter files a conforming Rule 61 motion and the Superior Court issues a final decision adverse to Carter, Carter can challenge, on appeal, the Superior Court's application of the provisions of Rule 61 in his case.

NOW, THEREFORE, IT IS ORDERED that the petition for a writ of mandamus is DISMISSED.

BY THE COURT:



A handwritten signature in black ink, appearing to read "John T. Walsh", is written over a horizontal line. Below the signature, the word "Justice" is printed in a smaller, sans-serif font.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

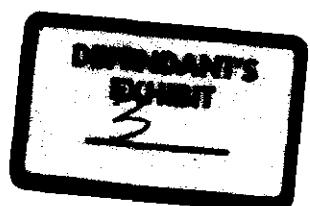
SHERMAN A. CARTER, :
Petitioner, :
v. : C.A. No. 98-173-JJF
SHERESE BREWINGTON-CARR, Warden :
and M. JANE BRADY, Attorney General of :
the State of Delaware, :
Respondents. :

Sherman A. Carter, Smyrna, Delaware.
Pro Se Petitioner.

Thomas E. Brown, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF
JUSTICE.
Attorney for Respondents.

MEMORANDUM OPINION

February 10, 1999
Wilmington, Delaware





Joseph J. Farnan
FARNAN, Chief Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Sherman A. Carter. For the reasons set forth below, the Petition will be denied.

BACKGROUND

In 1993, a grand jury indicted Petitioner on 12 charges stemming from three separate incidents. The first four charges -- second degree burglary, criminal mischief, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in May 1993 involving Petitioner's former girlfriend. The second set of charges -- first degree assault, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in August 1993 involving one of Petitioner's relatives. The third set of charges -- possession with intent to deliver narcotics, possession of narcotics within 1000 feet of a school, carrying a concealed deadly weapon, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an arrest of Petitioner on outstanding warrants in September 1993.

Prior to trial, the first four charges were severed and nolle prossed by the State. On the day Petitioner's trial was to commence, the State nolle prossed the three charges relating to the incident involving Petitioner's relative and the charges of possession of narcotics within 1000 feet of a school and possession of a deadly weapon during the commission of a felony. The State also amended the indictment to reduce the charge of possession with intent to deliver to simple possession. In June 1994, a Delaware Superior Court jury convicted Petitioner of possession of cocaine, possession of a deadly weapon by a person prohibited and carrying a concealed deadly

weapon.

Petitioner was initially sentenced to eight years imprisonment, suspended after three years imprisonment for five years of drug treatment and probation. In September 1994, the sentence was amended to one year imprisonment followed by seven years of decreasing levels of probation. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court. Carter v. State of Delaware, 663 A.2d 486 (Del. 1995). Subsequently, the Superior Court denied Petitioner's application for post-conviction relief and the Delaware Supreme Court affirmed. Carter v. State of Delaware, 676 A.2d 901 (Del. 1996).

On May 28, 1997 and again on September 16, 1997, Petitioner was found guilty of violating his probation. (Superior Court Criminal Docket at Nos. 62 and 66). Petitioner did not appeal either of the convictions. On December 16, 1997, the Superior Court again found Petitioner guilty of violating his probation. (Superior Court Criminal Docket at Nos. 67 and 68). The Superior Court revoked Petitioner's probation and sentenced him to two years in prison suspended for probation following successful completion of a drug treatment program. (Superior Court Criminal Docket at No. 62).

Thereafter, Petitioner filed a petition for writ of mandamus with the Delaware Supreme Court. The state Supreme Court found that there was no basis for an issuance of a writ of mandamus to the trial court and dismissed Petitioner's application. In re Carter, 1998 WL 171110, *1 (Del. March 25, 1998). On April 6, 1998, Petitioner filed the instant Petition alleging that his December 16, 1997 sentence is illegal.¹ (D.I. 1 at 5).

¹ The Petition also contains three additional grounds for relief: (1) ineffective assistance of counsel; (2) prosecutorial misconduct and (3) the state writ of habeas corpus violates due

DISCUSSION

Before addressing Petitioner's claim, the Court must address two threshold issues: (1) whether an evidentiary hearing is warranted and (2) whether Petitioner has exhausted all of his available state remedies. Petitioner filed the instant Petition subsequent to April 24, 1996, the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (the "Act"). Accordingly, the Act, which amended 28 U.S.C. § 2254, applies to the instant Petition. Dawson v. Snyder, 988 F. Supp. 783, 803 (D. Del. 1997) (holding that amended § 2254 applies to any habeas petition filed after effective date of Act).

With regard to evidentiary hearings, the Act provides, in relevant part:

If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that --

- (A) the claim relies on --
 - (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
- (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

In the instant Petition, the Court finds that an evidentiary hearing is not warranted because the

process. (D.I. 1 at 5-6). However, in Petitioner's Objection to Motion for Extension [sic] of Time (D.I. 19), Petitioner requested that the Court dismiss all grounds raised in his Petition "except for ground one, the illegal sentence." (D.I. 19 at ¶ 4). Respondents do not oppose Petitioner's voluntary withdrawal of these claims, but note that these claims are unexhausted and therefore would be subject to dismissal. (D.I. 22 at 4). The Court will permit the withdrawal of Petitioner's second, third and fourth claims. The Court notes, however, that if such withdrawal was not permitted, the Petition would be dismissed because Petitioner failed to exhaust his state remedies. See 28 U.S.C. § 2254(b)(1)(A).

Petitioner has not alleged the existence of any new rule of law or any new facts to justify his request for an evidentiary hearing. (D.I. 26 at 4). Petitioner states no reasons why an evidentiary hearing is needed on his claim, or what evidence a hearing would develop. Because Petitioner has failed to make the requisite showing under Section 2254(e)(2), the Court will deny Petitioner's request for an evidentiary hearing.

Second, in order for Petitioner to avail himself of federal habeas review, he must have exhausted all available state remedies. 28 U.S.C. § 2254(b)(1)(A). Here, Petitioner has not exhausted his claim by presenting it to the state supreme court either on direct appeal or through post-conviction proceedings. Although Petitioner presented his illegal sentence claim to the Delaware Supreme Court through an application for writ of mandamus, the state court did not expressly decide the issue. See Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982) (stating that habeas petitioner may satisfy exhaustion requirement by "demonstrating that a state court has expressly decided the issues he raises in his habeas petition"). After reviewing the state record, the Court finds that the state Supreme Court did not consider the merits of Petitioner's claim when it dismissed Petitioner's application for a writ of mandamus. See In re Carter, 1998 WL 171110, *1 (Del. March 25, 1998) (holding that no basis exists for issuance of writ of mandamus to trial court and that Petitioner had "adequate opportunity to challenge the Superior Court's December 16 sentence [as well as the sentences imposed on May 28, 1997 and September 16, 1997] in an appeal"). Thus, the Court concludes that Petitioner has not exhausted his available state remedies. Nevertheless, the Court will proceed to the merits of the Petition because Respondents have expressly waived the exhaustion defense with respect to Petitioner's illegal sentence claim. See Respondents' Answer (D.I. 22 at 5); 28 U.S.C. § 2254(b)(3).

I. Illegal Sentence

In his Petition and Reply, Petitioner contends that the Delaware Superior Court improperly sentenced him for violating his probation with respect to Criminal Action No. 93090851. (D.I. 1 at 5; D.I. 26 at 2). Specifically, Petitioner contends that the probationary sentence for each of the three charges should be treated discretely. (D.I. 2). Thus, Petitioner argues, because his sentence as to Criminal Action No. 93090851 was completed in September, 1996 without any violation, he can not be sentenced for violating his probation as to that criminal action. (D.I. 1 at 5).

“The receipt of a probationary sentence is not a right guaranteed by the Federal constitution, but is a privilege granted through legislative grace.” United States of America ex rel. Sole v. Rundle, 435 F.2d 721, 723 (3d Cir. 1971). The court that is empowered, in its discretion, to place on probation a person guilty of a criminal offense, may also revoke the probation and impose any sentence it could have declared originally. Id. at 724. “The revocation of a suspended sentence and probation followed by the imposition of a prison sentence does not subject a probationer to double jeopardy.” Id.

Section 4301 of Title 11 of the Delaware Code authorizes the Superior Court to grant and terminate probationary and suspended sentences arising from criminal convictions.. 11 Del. C. § 4301. Under Title 11, Section 4333 of the Delaware Code, Delaware courts may exercise their discretion in terminating probationary terms “at any time.” 11 Del. C. § 4333 (“Probation or suspension of sentence may be terminated by the court at any time . . .”). The Delaware Supreme Court has interpreted Section 4333 “to confer broad discretion upon trial courts regarding the grant and termination of probation.” Williams v. State of Delaware, 560 A.2d

1012, 1015 (Del. 1989); See also Larson v. State of Delaware, 1995 WL 236650, *1 (Del. April 13, 1995) (rejecting argument that appellant's sentences for each charge be treated separately and, because appellant finished his first period of probation before emergency capias was issued, appellant cannot be resentenced on that charge). Consequently, the Delaware Supreme Court has consistently accorded trial courts wide latitude in probationary matters. Id.

Applying these principles to the instant case, the Court finds that the Superior Court had discretion under Delaware law to treat Petitioner's seven year probationary period as a single term rather than three divisible terms. Accordingly, the Superior Court properly exercised its power to revoke Petitioner's probation at any time during the total seven year probationary period. Further, the Court finds that the exercise of such discretion in probationary matters does not violate Petitioner's constitutional right against double jeopardy. See Rundle, 435 F.2d at 723.

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus (D.I. 1) filed by Petitioner, Sherman A. Carter will be denied. In addition, Petitioner's Motion for Temporary Release Pending the Petition for Writ of Habeas Corpus (D.I. 6) and Petitioner's request for Appointment of Counsel (D.I. 26) will likewise be denied as moot.

An appropriate Order will be entered.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE
PETITION OF SHERMAN A.
CARTER FOR A WRIT OF
MANDAMUS.

No. 128, 1999

Submitted: April 19, 1999
Decided: April 27, 1999

Before VEASEY, Chief Justice, WALSH and BERGER, Justices.

O R D E R

This 27th day of April 1999, upon consideration of the petition for a writ of mandamus filed by Sherman A. Carter and the answer and motion to dismiss filed by the State of Delaware, it appears to the Court that:

(1) In June 1994, Carter was convicted in the Superior Court of possession of cocaine and two weapons offenses. Carter was initially sentenced to eight years' imprisonment, suspended after three years for five years of drug treatment and probation. In September 1994, Carter's sentence was amended to one year of imprisonment followed by seven years of probation. Carter's conviction was affirmed on appeal.¹ Carter subsequently

¹ *Carter v. State*, Del. Supr., No. 314, 1994, Veasey, C.J., 1995 WL 439234 (July 18, 1995) (ORDER).

filed for postconviction relief. The Superior Court's denial of relief was affirmed on appeal.²

(2) In 1997, Carter was thrice adjudged guilty of violating his probation and was sentenced. The third violation of probation proceeding was in December 1997. Carter was sentenced to two years' imprisonment, suspended for probation following his successful completion of a treatment program. Carter did not appeal the conviction and sentence.

(3) Complaining that the December 1997 sentence was illegal, Carter sought federal and state habeas corpus relief. By memorandum opinion dated February 10, 1999, the Delaware District Court denied Carter's federal habeas corpus petition.³ By order dated March 4, 1999, the Superior Court denied Carter's state habeas corpus petition.⁴ Carter did not file an appeal from the Superior Court's denial of habeas corpus relief. Instead, on March 29, 1999, Carter filed the pending petition for a writ of mandamus.

² *Carter v. State*, Del. Supr., No. 496, 1995, Hartnett, J., 1996 WL 145773 (Feb. 22, 1996) (ORDER).

³ *Carter v. Brewington-Carr, et al.*, D. Del., C.A. No. 98-173-JJF, Farnan, C.J. (Feb. 10, 1999).

⁴ *Carter v. Snyder*, Del. Super., C.A. No. 99M-02-074, Alford, J. (March 4, 1999) (ORDER).

(4) Carter's petition for a writ of mandamus asserts that he "has sought release by every means available" from the "illegal detention," *i.e.*, the December 1997 sentence, "that violates his constitutional rights." Carter requests that the Court issue an order "compelling the respondents to release him."

(5) In the caption of his petition for a writ of mandamus, Carter names the following individuals as respondents: "Robert Snyder, Warden, Delaware Correctional Center" and "R.L. McBride, Supervision, Records Department." In the body of his petition, Carter also names the Superior Court Judge who denied Carter's habeas corpus petition.

(6) It is well-settled Delaware law that "[t]his Court's original jurisdiction to issue a writ of mandamus is limited to instances when a respondent is a court or a judge thereof."⁵ Thus, to the extent that Carter's petition requests the issuance of a writ to a prison official, the petition manifestly fails on its face to invoke the Court's original jurisdiction.

(7) The Court will issue a writ of mandamus to a trial court only when the petitioner can show that there is the clear right to the performance

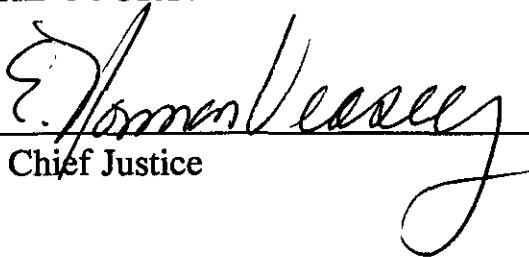
⁵ *Matter of Hitchens*, Del. Supr., 600 A.2d 37, 38 (1991).

of the duty at the time of the petition, no other adequate remedy is available, and the trial court has failed or refused to perform its duty.⁶ This Court has held repeatedly that a petition for a writ of mandamus cannot be used as a substitute for a timely-filed appeal.⁷

(8) There is no basis for the issuance of a writ of mandamus to the Superior Court in this case. Carter has not demonstrated that the Superior Court has arbitrarily failed or refused to perform a duty owed to him. Furthermore, Carter had an adequate opportunity to challenge the Superior Court's denial of habeas corpus relief in an appeal to this Court. Carter's failure to file an appeal does not give him the right now to seek relief through the extraordinary writ process.

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss is GRANTED. The petition for a writ of mandamus is DISMISSED.

BY THE COURT:



E. Normen Lassley
Chief Justice

⁶ *In re Bordley*, Del. Supr., 545 A.2d 619, 620 (1988).

⁷ *See Matushefske v. Herlihy*, Del. Supr., 214 A.2d 883, 885 (1965).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN A. CARTER, :
Petitioner, :
v. : C.A. No. 98-549-JJF
STANLEY TAYLOR, Warden :
and M. JANE BRADY, Attorney General of :
the State of Delaware, :
Respondents. :

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Sherman A. Carter, Smyrna, Delaware.
Pro Se Petitioner.

Thomas E. Brown, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF
JUSTICE, Wilmington, Delaware.
Attorney for Respondents.

MEMORANDUM OPINION

August 14, 1999
Wilmington, Delaware





Joseph J. Farnan
FARNAN, Chief Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Sherman A. Carter. For the reasons set forth below, the Petition will be dismissed.

BACKGROUND

In 1993, a grand jury indicted Petitioner on 12 charges stemming from three separate incidents. The first four charges -- second degree burglary, criminal mischief, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in May 1993 involving Petitioner's former girlfriend. The second set of charges -- first degree assault, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an alleged incident in August 1993 involving one of Petitioner's relatives. The third set of charges -- possession with intent to deliver narcotics, possession of narcotics within 1000 feet of a school, carrying a concealed deadly weapon, possession of a deadly weapon during the commission of a felony and possession of a deadly weapon by a person prohibited -- arose from an arrest of Petitioner on outstanding warrants in September 1993.

Prior to trial, the first four charges were severed and nolle prossed by the State. On the day Petitioner's trial was to commence, the State nolle prossed the three charges relating to the incident involving Petitioner's relative and the charges of possession of narcotics within 1000 feet of a school and possession of a deadly weapon during the commission of a felony. The State also amended the indictment to reduce the charge of possession with intent to deliver to simple possession. In June 1994, a Delaware Superior Court jury convicted Petitioner of possession of cocaine, possession of a deadly weapon by a person prohibited and carrying a concealed deadly

weapon.

Petitioner was initially sentenced to eight years imprisonment, suspended after three years imprisonment for five years of drug treatment and probation. In September 1994, the sentence was amended to one year imprisonment followed by seven years of decreasing levels of probation. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court. Carter v. State of Delaware, 663 A.2d 486 (Del. 1995). Subsequently, the Superior Court denied Petitioner's application for post-conviction relief and the Delaware Supreme Court affirmed. Carter v. State of Delaware, 676 A.2d 901 (Del. 1996).

On May 28, 1997 and again on September 16, 1997, Petitioner was found guilty of violating his probation. (Superior Court Criminal Docket at Nos. 62 and 66). Petitioner did not appeal either of the convictions. On December 16, 1997, the Superior Court again found Petitioner guilty of violating his probation. (Superior Court Criminal Docket at Nos. 67 and 68). The Superior Court revoked Petitioner's probation and sentenced him to two years in prison suspended for probation following successful completion of a drug treatment program. (Superior Court Criminal Docket at No. 62).

Thereafter, Petitioner filed a petition for writ of mandamus with the Delaware Supreme Court. The state Supreme Court found that there was no basis for an issuance of a writ of mandamus to the trial court and dismissed Petitioner's application. In re Carter, No. 90,1998, 1998 WL 171110, at *1 (Del. March 25, 1998). On April 6, 1998, Petitioner filed a Petition pursuant to 28 U.S.C. § 2254 alleging that his December 16, 1997 sentence was illegal.

On February 12, 1999, the Court issued a Memorandum Opinion and Order denying the Petition. (C.A. No. 98-173-JJF, D.I. 29 and 30). Thereafter, Petitioner filed a Motion for

Amendment of Judgment (C.A. No. 98-173-JJF, D.I. 31) requesting the Court to hold an evidentiary hearing or, in the alternative, to grant Petitioner a certificate of appealability. The Court found that there was no error of law or injustice in denying the Petitioner's Section 2254 Petition, and therefore, denied the Motion for Amendment of Judgment. (C.A. No. 98-173-JJF, D.I. 35 and 36).

The instant Petition relates to the criminal charges that were nolle prossed by the State prior to the Petitioner's trial. Specifically, the Petitioner alleges (1) ineffective assistance of counsel in that his trial attorneys failed to have dismissed the allegedly false and inflated charges, which were later nolle prossed, and (2) malicious prosecution in that he was held in jail under excessive bail on allegedly false or inflated charges that were later nolle prossed. (D.I. 1). In their Answer to the Petition, the Respondents contend that the Petition is untimely pursuant to 28 U.S.C. § 2244(d), and therefore, should be dismissed. (D.I. 7 at 4-5). Alternatively, the Respondents contend that Petitioner's claims should be rejected on the merits. (D.I. 7 at 5-9).

DISCUSSION

As a threshold matter, the Court must address whether the instant Petition is untimely under the Antiterrorism and Effective Death Penalty Act of 1996 ("the AEDPA").¹ Effective April 24, 1996, the AEDPA amended 28 U.S.C. § 2254 by making habeas petitions subject to a one year statute of limitations. The relevant part of Section 2244(d) provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of

¹ Petitioner filed the instant Petition subsequent to April 24, 1996, the effective date of the AEDPA, and therefore, the AEDPA applies to the instant Petition. Dawson v. Snyder, 988 F. Supp. 783, 803 (D. Del. 1997) (holding that amended Section 2254 applies to any habeas petition filed after effective date of AEDPA).

habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review . . . (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection. 28 U.S.C. § 2244(d).

In applying Section 2244(d), the United States Court of Appeals for the Third Circuit has held that petitioners, whose conviction became final before April 24, 1996, are entitled to a one year "grace period" following the effective date of the AEDPA in which to file habeas motions. Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Accordingly, Section 2254 petitions filed on or before April 24, 1997, may not be dismissed for failure to comply with the one year statute of limitations. Id. at 112. Petitions filed after the one year grace period; however, are subject to dismissal for failure to adhere to the new limitations period imposed by the AEDPA. United States v. McNair, Civ. A. 98-6021, Crim. A. 95-124-09, 1999 WL 281308, at *1 (E.D. Pa. May 3, 1999). The Third Circuit has recognized that the "effect of Burns v. Morton was to make . . . all other convictions in this circuit otherwise final before the effective date of the AEDPA, April 24, 1996, final on that day for purposes of calculating the [one year limitations period]." United States v. Duffus, 174 F.3d 333, 335 (3d Cir. 1999).

In the instant case, the Petitioner was convicted in June 1994, and the Delaware Supreme Court affirmed his conviction on July 18, 1995. Where, as here, a petitioner has not filed a petition for a writ of certiorari before the United States Supreme Court, the judgment of conviction becomes final on "the date on which the [petitioner's] time for filing a timely petition for certiorari review expires." Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

Accordingly, the Petitioner's conviction became final 90 days from July 18, 1995.² Because the Petitioner's conviction was final prior to the enactment of the AEDPA, for purposes of calculating the one year limitations period, Petitioner's conviction will be deemed final as of April 24, 1996, the effective date of the AEDPA. Applying Section 2244(d) from this date, the Petitioner was required to file the instant Petition no later than April 24, 1997.

The Third Circuit has ruled that a pro se prisoner's habeas petition is deemed filed at the "moment he delivers it to prison officials for mailing to the district court." Burns, 134 F.3d at 113 (extending rule in Houston v. Lack, 487 U.S. 266 (1988) to petitions filed under Sections 2254 and 2255). Here, the Petitioner does not indicate the date on which the Petition was delivered to prison officials for mailing. Absent proof of mailing, courts have held that the date of the signatures within the petition is the date on which the petition is deemed filed. See Esquelin v. Artuz, No. 97 Civ. 3310, 1998 WL 2827, at *2 (S.D.N.Y. Jan. 6, 1998) (treating date on which petition was notarized as filing date); United States v. Timber, 7 F. Supp. 2d 1356, 1361 (N.D. Ga. 1998) (treating date on which pro se prisoner signed and dated motion as filing date).

In this case, the Petition is dated September 10, 1998, which is beyond the April 24, 1997 filing deadline. Accordingly, the Court concludes that the instant Petition is untimely under Section 2244(d) and will dismiss the Petition. Because of the Court's conclusion, the Court will

² Supreme Court Rule 13 provides in pertinent part:

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment.

not address the merits of the Petitioner's claims.

CONCLUSION

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus (D.I. 1) filed by Petitioner, Sherman A. Carter will be dismissed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHERMAN A. CARTER,

Petitioner,

v.

C.A. No. 98-549-JJF

STANLEY TAYLOR, Warden
and M. JANE BRADY, Attorney General of
the State of Delaware,

Respondents.

ORDER

At Wilmington this 6 day of August 1999, for the reasons set forth in the
Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. The Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus (D.I. 1) filed by Petitioner, Sherman A. Carter is DISMISSED.
2. Because the Court finds that Petitioner has failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability is DENIED.



UNITED STATES DISTRICT JUDGE

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE) CASE NO. 303X6881DI
V.)
SHERMAN A CARTER) CR.A. NO. VN9309085102
DOB: 08/15/50) CHARGE: VIOL O/PROBATN
SBI: 00102896)) ORIG. CHARGE: PDWBPP
)

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF SEPTEMBER, 1997, IT IS THE ORDER OF THE COURT THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS HEREWITHE:

REVOKE, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

EFFECTIVE SEPTEMBER 16, 1997, THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5 FOR A PERIOD OF 2 YEARS, INCLUDING CREDIT FOR ANY TIME PREVIOUSLY SERVED.

IF THE DEFENDANT IS PRESENTLY SERVING ANOTHER SENTENCE, THAT SENTENCE SHALL BE SUSPENDED UNTIL COMPLETION OF THIS SENTENCE.

THIS SENTENCE IS SUSPENDED FOR 2 YEARS AT SUPERVISION LEVEL 4 - PLUMMER CENTER. UPON SUCCESSFUL COMPLETION OF DRUG TREATMENT PROGRAM, THIS SENTENCE IS SUSPENDED FOR THE BALANCE AT SUPERVISION LEVEL 3.

THE DEFENDANT IS TO BE HELD AT SUPERVISION LEVEL 3 UNTIL SPACE IS AVAILABLE AT SUPERVISION LEVEL 4.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	CASE NO. 30504866DI
)	
V.)	CR.A. NO. VN8508068102
)	CHARGE: VIOL O/PROBATN
SHERMAN A CARTER)) ORIG. CHARGE: TRF.IL.DR.8-20G
DOB: 08/15/50)	
SBI: 00102896)	

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF SEPTEMBER, 1997, IT IS THE ORDER OF THE COURT THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS HEREWITH:

REVOKE, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5 FOR A PERIOD OF 12 YEARS.

THIS SENTENCE IS SUSPENDED FOR 12 YEARS AT SUPERVISION LEVEL 3. AFTER SERVING 1 YEAR AT SUPERVISION LEVEL 3, THIS SENTENCE IS SUSPENDED FOR 11 YEARS AT SUPERVISION LEVEL 2.

THE NON-INCARCERATIVE PORTION OF THIS SENTENCE SHALL BE SERVED CONSECUTIVELY TO THE NON-INCARCERATIVE PORTION OF THE SENTENCE IMPOSED IN CR.A. NO. VN93-09-0851-02.

STATE OF DELAWARE V. SHERMAN A CARTER,
303X6881DI 30504866DI

THE FOLLOWING CONDITIONS SHALL APPLY TO THIS SENTENCE, THE DEFENDANT SHALL:

BE EVALUATED FOR SUBSTANCE ABUSE AND FOLLOW ANY DIRECTIONS FOR COUNSELING, TESTING, OR TREATMENT MADE BY THE PROBATION OFFICER.

BE ASSIGNED TO THE RESIDENTIAL AND/OR OUTPATIENT DRUG/ALCOHOL TREATMENT PROGRAM UNTIL SUCH PROGRAM IS COMPLETED.

ALL PREVIOUS TERMS AND CONDITIONS IMPOSED REMAIN AS PREVIOUSLY ORDERED.


JUDGE HAILE L. ALFORD

DEC 01 1997

STATE OF DELAWARE
DEPARTMENT OF CORRECTION
BUREAU OF COMMUNITY CUSTODY AND SUPERVISION
PLUMMER COMMUNITY CORRECTION CENTER
38 TODDS LANE
WILMINGTON, DELAWARE 19802

Telephone: (302) 577-3039

FACSIMILE: (302) 577-2848

EMERGENCY CAPIAS/WARRANT

RE: Sherman Carter	DATE: 12/01/97
RACE/SEX: Black/Male	D.O.B.: 08/15/50
JUDGE/COURT: The Honorable H. Alford/SCNCC	CR. A.#: VN 9309085102

The above named offender is under SENTAC LEVEL IV supervision by the Department of Correction and is alleged to be in violation of their conditions of supervision.

I, Jessie L. Waller Sr., an employee of the Department of Correction, do hereby depose any Sheriff, Constable, or Peace Officer of the State of Delaware to arrest and detain Sherman Carter pursuant to 11 DEL CODE, Section 4334, Subsection (b), and Section 4352, Subsection (a).

IT IS ALLEGED THAT THE FOLLOWING CONDITIONS OF SUPERVISION HAVE BEEN VIOLATED:

As to Condition #12: A Alco Sensor Breath Test conducted on 10/19/97 resulted in a .10 positive finding for alcohol.
A Urine Screen conducted on 11/20/97 returned positive for cocaine. Another Alco Sensor Breath test conducted 11/30/97 resulted in a .04 positive reading for alcohol.

As to Condition #5: Curfew checks conducted on 11/07/97 and 11/17/97 revealed that Mr. Carter was not at home.

As to Condition #2: During the month of 10/97, Mr. Carter failed to report for a scheduled group session at NET Counseling.

Signed Jesse L. Waller
Officer Jessie L. Waller, Sr., Supervised C

LEVE

Hold without bail until the Violation hearing on: 12/01/97

12/97

DX 7

N.

SO ORDERED:

H. Alford
The Honorable H. Alford



To: [Redacted]

PLUMMER CENTER

12/01/97 10:42 PAX 302 877 2848

DOC
BP
PP
PS
CF

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE) CASE NO. 303X6881DI
V.)
SHERMAN A CARTER) CR.A. NO. VN9309085103
DOB: 08/15/50) CHARGE: VIOL O/PROBATN
SBI: 00102896)) ORIG. CHARGE: PDWBPP
)

VIOLATION OF PROBATION

NOW THIS 16TH DAY OF DECEMBER, 1997, IT IS THE ORDER OF THE COURT
THAT:

THE DEFENDANT IS ADJUDGED GUILTY OF VIOLATION OF THE PROBATION
SENTENCE ORDERED IN THE ABOVE STATED ACTION AND SUCH PROBATION IS
HEREWITH:

REVOKE, AND SENTENCE IS REIMPOSED AS SHOWN HEREAFTER.

EFFECTIVE December 16, 1997, THE DEFENDANT IS PLACED IN THE
CUSTODY OF THE DEPARTMENT OF CORRECTIONS AT SUPERVISION LEVEL 5
FOR A PERIOD OF 2 YEARS.

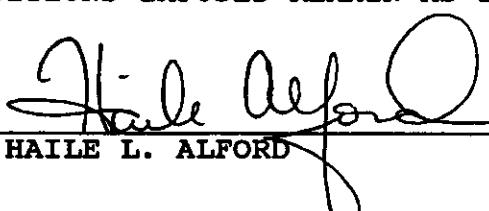
UPON SUCCESSFUL COMPLETION OF THE NEW HOPE PROGRAM OR A PROGRAM
TO BE DETERMINED BY DEPARTMENT OF CORRECTION WHILE AT SUPERVISION
LEVEL 5, THIS SENTENCE IS SUSPENDED FOR THE BALANCE AT SUPERVISION
LEVEL 3.

FILED
PROSECUTORIAL
12/16/97 10 AM 12:29

STATE OF DELAWARE V. SHERMAN A CARTER,
303X6881DI

THE FOLLOWING CONDITIONS SHALL APPLY TO THIS SENTENCE, THE DEFENDANT SHALL:

ALL PREVIOUS TERMS AND CONDITIONS IMPOSED REMAIN AS PREVIOUSLY ORDERED.


JUDGE HAILE L. ALFORD

FILED
PROSECUTOR
1999 FEB 10 PM 12:29



STATE OF DELAWARE
DELAWARE CORRECTIONAL CENTER
SMYRNA, DELAWARE 19977

TELEPHONE (302) 653-9261

March 4, 1999

Public Defender of The State of Delaware
Elbert N. Carvel State Office Building
Attn: Edward C. Pankowski, Jr.
Assistant Public Defender
820 N. French Street, Third Floor
P.O. Box 8911
Wilmington, DE 19801

RE: Sherman Carter
SBI #102896

Dear Mr. Pankowski:

Recently we had received a letter that you had sent to your client, Mr. Carter, who was questioning his credit for time previously served. Upon review of Mr. Carter's file, I am showing that he was given credit for time previously served per Cr. A. No. VN93-09-085103.

The date of the sentence was 12/16/97, giving credit for time served (12/1/97), per the sentencing order. We have given him credit for time served on this sentence and as of 3/4/99 Mr. Skinner's short time release date (after meritorious goodtime applied) is 9/17/99.

We can not give any other credit time unless the Judge orders us to do so.

If you have further questions, please contact me at the above number ext. 1698

Sincerely,

A handwritten signature in black ink that reads "Rebecca L. McBride".

Rebecca L. McBride
Records Supervisor

cc: Inmate File
Francene Kobus



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

State of Delaware)

v.)

Sherman A. Carter)

DOB: 08/15/50)

Def. ID 303X6881DI)

SBI #00102896)

) Cr.A. No. VN93-09-0851

)
D.C. RECORDS
1999 MAR -6 P 1: 53

RECEIVED

AMENDED SENTENCING ORDER

Now this 4th day of March, 1999, it is the Order of the Court that the Sentencing Order of December 16, 1997 is hereby amended as set forth below:

Defendant is placed in the custody of the Dept. of Corrections at Level 5 for two (2) years. The defendant shall be given credit for time previously served.

In all other respects, the Sentencing Order of December 16, 1997 shall remain the same.

Hale Afon J.

Original: Prothonotary's Office - Criminal Div.

cc: Presentence

DCC Records Dept.
Sherman Carter - DCC

D X 11



J.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Sherman A. Carter)
)
)
v.) C.A. No. 99M-02-074 HLA
)
)
State of Delaware) HABEAS CORPUS APPLICATION
)
)
Defendant.)

ORDER

This 4th day of March, 1999, after having considered Petitioner's application for a Writ of Habeas Corpus pursuant to 10 Del.C. §6902.

IT APPEARS:

- 1) That the Petitioner is lawfully being detained pursuant to the Violation of Probation Sentencing Order of Judge Haile Alford dated December 16, 1997.
- 2) Petitioner's argument regarding his sentence is not the proper subject matter for a Writ of Habeas Corpus.

NOW THEREFORE, Petitioner's application for a Writ of Habeas Corpus is DENIED.

Haile Alford
1999 Mar 4 PM 5:27
PROTHOMA
FILED
J.



DELAWARE CORRECTIONAL CENTER

MEMORANDUM

Records Dept.

TO: Francene Kobus

FROM: Rebecca L. McBride
Records Supervisor

DATE: March 17, 1999

RE: Inmate Sherman A. Carter

Inmate Sherman A. Carter has written several times and has received several responses back to him explaining his sentence and calculation thereof. Apparently, he wishes to file a Civil Action against Thomas Orr.

I have attached all documentation in reference to the above inmate. I had also sent a letter to the Public Defender that is handling Inmate Carter's case.

If further information is needed, please advise.

Attachments

cc: Inmate File
File

Date: 3/17/99

Inmate: Sherman Carter

SBI#: 102896

Your current short-term release date is: 9/17/99

Your current parole date is: N/A

You had violated your probation twice. You would only receive credit for when you violated and came back to the Institution on Level 5 which was 12/1/97. If you wish to request credit for time served while on Probation, you would need to go back to the Judge explaining such. Records

We would not have the exact days to give you credit while on Probation, that would need to come from the probation officer and the Judge would have to send order with those specific days to be granted to you.

Thank you,

Rebecca L. McBride
Records Supervisor

cc: Inmate file

FORM # 114

*Released from
8/3/99*

SUI

ENT (CIS)

FOR ADM

TO: TOM ORR

ED INTO EVIDENCE

COUNTY:

FILING:

CIVIL C:

CODE:

Attorney Name:

Firm Name:

Office Address:

Telephone Number:

FOR YOUR INFORMATION

THIS ACTION WILL BE FILED AS SOON

AS ACCOUNT STATEMENT IS RECEIVED

FROM BUSINESS OFFICE. SEE YOU AND
YOUR COUNSEL IN COURT.Yes No

(a) Doe, Plaintiff

(b) with Counterclaim

ARBITRATION _____ NON-ARBITRATION _____

JURY DEMAND YES _____ NO _____

ESTIMATED TRIAL LENGTH _____ Days

Anticipated Consolidation with Another Action? YES NO

Civil Action Number: _____

ATTACHMENTS TO THE PLEADINGS:

Affidavit of Demand A
 Affidavit of Defense B
 Affidavit of Mailing C
 Certificate of Value D
 Form 30 Interrogatories E
 Rule 3(H) Documents F

RECEIVED

CAPTION

Sherman A. Carter

VS.

Tom Orr, defendant

TRACK ASSIGNMENT REQUESTED: (Circle One)

EXPEDITED STANDARD COMPLEX

BRIEFLY DESCRIBE WHY CASE IS COMPLEX OR EXPEDITED (Use a Separate Sheet If Additional Space Is Required):

Defendant has refused to calculate plaintiff's jail time in compliance with the laws applicable to sentence, causing plaintiff to be detained.

IS MEDIATION AN ALTERNATIVE DISPUTE RESOLUTION OPTION IN THIS CASE? YES NO

RELIEF REQUESTED

Amount of Special Damages Claimed

\$ \$300,000.00

Amount Includes a Claim for:

<input type="checkbox"/> Property Loss	<input type="checkbox"/> Medical Expenses	<input type="checkbox"/> Loss of Earnings
<input type="checkbox"/> Liquidated Damages	<input checked="" type="checkbox"/> Other - Please Specify: Mental Anguish	

ADDITIONAL CLAIMS: Punitive Damages Other Non-Liquidated DamagesNON-MONETARY RELIEF REQUESTED: Immediate release
(e.g., Declaratory Judgment)AFFIRMATIVE DEFENSES:

1) _____ 2) _____ 3) _____

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

FOR ADMINISTRATIVE PURPOSES ONLY. THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

COUNTY: N K S CIVIL ACTION NUMBER: _____FILING FEE AMOUNT: _____ FEE ENCLOSED: _____ Yes No

CIVIL CASE TYPE: (SEE INSTRUCTION PAGE FOR APPLICABLE CODE AND CASE TYPE DESIGNATIONS)

CODE: _____ TYPE: CMIS

Attorney Name: _____

NAME AND STATUS OF PARTY: (e.g., John Doe, Plaintiff)

Firm Name: _____

Sherman A. Carter

Office Address: _____

DOCUMENT TYPE: (e.g., Complaint, Answer with Counterclaim)

Telephone Number: _____

Complaint

CAPTION
Sherman A. Carter
 VS.
Tom Orr, defendant

ARBITRATION NON-ARBITRATION JURY DEMAND YES NO

ESTIMATED TRIAL LENGTH _____ Days

Anticipated Consolidation with Another Action? YES NOCivil Action Number: 100-1000

ATTACHMENTS TO THE PLEADINGS:

Affidavit of Demand
 Affidavit of Defense
 Affidavit of Mailing
 Certificate of Value
 Form 30 Interrogatories
 Rule 3(H) Documents

RECEIVED

TRACK ASSIGNMENT REQUESTED: (Circle One) EXPEDITED STANDARD COMPLEX

BRIEFLY DESCRIBE WHY CASE IS COMPLEX OR EXPEDITED (Use a Separate Sheet If Additional Space Is Required): _____

Defendant has refused to calculate plaintiff's jail time in compliance with the laws applicable to sentence, causing plaintiff to be detained

IS MEDIATION AN ALTERNATIVE DISPUTE RESOLUTION OPTION IN THIS CASE? YES NO**RELIEF REQUESTED**Amount of Special Damages Claimed \$ 300,000.00

Amount Includes a Claim for:

Property Loss Medical Expenses Loss of Earnings
 Liquidated Damages Other - Please Specify: Mental Anguish

ADDITIONAL CLAIMS: Punitive Damages Other Non-Liquidated Damages NON-MONETARY RELIEF REQUESTED: Immediate release

AFFIRMATIVE DEFENSES: 1) _____ 2) _____

3) _____ 4) _____ 5) _____

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Sherman A. Carter,
Plaintiff,

v.

Civil A. No. _____

Tom Orr. in his personal
Records Dept. capacity.
Defendants.

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1

PRAECLIPSE

To: Prothonotary Office
Superior Court, Public Building
1100 King Street
Wilmington, DE 19801

Please docket the attached complaint and cause service
of
process upon the above defendants:

Tom Orr
Delaware Correctional Center
Smyrna, DE 19977

Delaware Correctional Center
Smyrna, DE 19977

Dated: _____

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SHERMAN A. CARTER,
Plaintiff,

vs.

TOM ORR,
Defendant in his
personal capacity.

Civil Action No.

COMPLAINT

FIRST CAUSE OF ACTION

1. Plaintiff, Sherman A. Carter was sentenced for the original offense of PDWBPP, which carries a maximum term of 3 years incarceration pursuant to Delaware Code Title 11. The original sentence was imposed on August 4, 1994, giving credit from September 4, 1993.
2. Plaintiff served up to November 30, 1994 on the original incarceration.
3. On June 27, 1997 and remained until he was judged guilty of a technicle violation with no new charge. On September 16th court reimposed his sentence giving credit for time previously served.
4. On December 1, 1997 plaintiff was again returned to prison

for another technical violation., and on December 16th court re-imposed a 2 year sentence suspended after completion of a program.

5. Title 11 Del.Code §3901 dictates that any prison time is to be calculated against sentence if no other sentence has been imposed.

6. The Courts properly reimpose sentences with the understanding that the Department of Corrections adequately calculate sentences pursuant to the laws of this state.

7. Defendant Tom Orr has refused to properly calculate plaintiff's time previously served, and in doing so has caused plaintiff to serve an amount of prison time that exceeds the statutory maximum established by law.

8. Plaintiff has taken numerous steps to gain his release from the illegal custody. Due process entitles inmate to an opportunity to have his claim to a particular release date meaningfully and expeditiously considered. Sample v. Diecks, 885 F.2d 1099 (1989).

9. Due process requires that a challenge to the calculation of release date^s promptly listened to. 14th Amendment U.S.C.A.

SECOND CAUSE OF ACTION

Plaintiff reallege each and every averment of paragraph 1, through 9 and hereby adds the following:

10. Plaintiff allege that the Defendant, Tom Orr, had an obligation to inquire as to the proper method of calculating plaintiff's sentence when, Defendant was provided the statute and crucial wording in place in all sentences, which was REIMPOSE and credit for time previously served.

11. Plaintiff contends that the actions of Defendant Orr were without due regard for plaintiff's right not to be held in violation of his rights.

12. Plaintiff contends that where information was provided to the Defendant Orr, he had a legal obligation to use due care in obtaining controlling guidelines for calculating sentences.

RELIEF SOUGHT

13. WHEREFORE the Plaintiff seeks damages in the amount of \$300,000.00 for Defendants' gross negligence and deliberate indifference.

dated:

signed:

Sherman A. Carter
DCC
Smyrna, DE 19977

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 IN AND FOR NEW CASTLE COUNTY

)
)
) C.A. No.
)
 SHERMAN A. CARTER)
 Plaintiff,)
 v.)
) SUMMONS
)
)
 TOM ORR in his personal)
 capacity)
 Defendant.)

THE STATE OF DELAWARE,
 TO THE SHERIFF OF COUNTY:
 YOU ARE COMMANDED:

To summon the above named defendant so that, within 20 days after service hereof upon defendant, exclusive of the day of service, defendant shall serve upon , plaintiff's attorney, whose address is , an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

To serve upon defendant a copy hereof and of the complaint (and of the affidavit of demand if any has been filed by plaintiff).

Dated:

Prothonotary

Per Deputy

TO THE ABOVE NAMED DEFENDANT:

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the complaint (or in the affidavit of demand, if any).

Prothonotary

Per Deputy

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

THE STATE OF DELAWARE

TO: TOM ORR
RECORDS DEPARTMENT
DELAWARE CORRECTIONAL CENT.
SMYRNA, DE 19977

DUCES TECUM: You are to bring with you a copy of any and all,
written procedures that direct the actions that must be taken
in calculating sentences. Evidence of your qualifacations as
to your training and minimal requirements of DOC.

YOU ARE HEREBY COMMANDED:

To appear at the Superior Court of New Castle County at 1020
North King Street, Wilmington, DE 19801 on _____,
_____, 1999.

Dated: _____

Sharon Agnew
Prothonotary

_____ Per Deputy

Sherman A. Carter
Delaware Correctional Cent.
Smyrna, DE 19977

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SHERMAN A. CARTER
Plaintiff,

vs.

TOM ORR,
Defendant in his
personal capacity.

Civil Action No.

MOTION IN OPPOSITION

PLAINTIFF comes now before the Honorable Court requesting that the Court not permit the Attorney General, ie, Department of Justice to represent the above cited Defendant. In support of said request the Plaintiff submits the following:

A. Delaware Code Annotated Title 29 §2504 The State Department of Justice and the Attorney General shall have the following powers, duties and authority: (3). Notwithstanding any other laws, to represent as counsel in all proceedings or actions which may be brought on behalf of or against them in their official capacity in any court, except in actions in which the State has a conflicting interest

B. The Department has no obligation to represent Defendant due to this action being pursued in Defendant's personal capacity and the Department has an existing conflict due to the Constitu-

tional violation of the Plaintiff's rights.

C. However if the Department wishes to take the position that the Defendant was acting in compliance with established policy, the Plaintiff would thereby waive his opposition.

For the reasons stated by the Plaintiff, the request should be granted.

dated:

signed: _____

SUMMONS

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR New Castle COUNTY

**THE STATE OF DELAWARE,
TO THE SHERIFF OF New Castle COUNTY:
YOU ARE COMMANDED:**

To summon the above named defendant so that, within 20 days after service hereof upon defendant, exclusive of the day of service, defendant shall serve upon plaintiff's attorney, whose address is , an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense).

To serve upon defendant a copy hereof and of the complaint (and of the affidavit of demand if any has been filed by plaintiff).

Dated: -

Prothonotary

Per Deputy

TO THE ABOVE NAMED DEFENDANT:

In case of your failure, within 20 days after service hereof upon you, exclusive of the day of service, to serve on plaintiff's attorney named above an answer to the complaint (and, if an affidavit of demand has been filed, an affidavit of defense), judgment by default will be rendered against you for the relief demanded in the complaint (or in the affidavit of demand, if any).

Prothonotary

Per Deputy

To: Tom Orr

March 12, 1999

Dear Sir,

I am enclosing to you a summons which is a part of a civil action inwhich I have named you personally. I need the name of your private attorney for this action. I have also completed a motion to deny you the assistance of the Department of Justice since your actions are not legal. If you chose to not provide the information requested, I will inform the court of my position that you are unrepresented.

Have a good day

Sherman A. Carter T-2

pc:file

RECEIVED
1999 MAR 15 PM 12:17
D.C.C. RECORDS

RECEIVED

FEB 26 1999

To: Deputy Warden
Betty Burris
Delaware Correctional Cent.
Smyrna, DE 19977

D.C.C.
ADMINISTRATIVE SERVICE

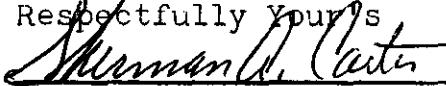
RE: SHERMAN A. CARTER SBI#102896

Dear Deputy Warden,

I am contacting you to request that you direct the Records Department to abide by the Delaware Code, Title 11 §3901, which states that any time served at level 5 that was not attributed to any other sentence must be calculated against the present sentence. Records has informed me that I must contact the court to get credit for time served. This was done by me, even though I am not required to take any action to insure that my sentence is calculated properly.

I am sure that if you were to contact the Attorney General's Office, someone there would concede that the duty to calculate my sentence falls on the Department of Justice and the Department of Corrections. I have since 1993 been imprisoned on three separate occasions for this same charge. I was never given a level 5 sentence for any other charge during this period. As of March 2, 1999 I will have served the statutory maximum permitted for the offense. I contacted records back during the summer providing a copy of two sentencing orders that show the incarcerations. I even filed a grievance which has not been resolved since that time.

It is my contention that as of March 2, 1999, I will be illegally held by this facility since I inform of the problem well before the injury could accure. I would be greatful for any help in this matter.

Respectfully yours

Sherman A. Carter T-2

UNTIL YOU LEARN YOUR OBLIGATION I WOULD
APPRECIATE NO FURTHER CONTACT WITH YOU IN THIS
MATTER AS A RIGHT

To: Tom Orr.

I received your information as to how my sentence is to be calculated. Since you are however required to act in accord with Delaware Law, I am quite interested in on what specific law you base your position. I disagree with your idiotic notion because my position is based on Title 11 § 3901. When you do not know your legal limitations, it would be wise to contact DDC's legal advisor before you subject yourself and them to what is now about to befall you. You don't hold the power that ~~you~~ think you do. I'll see you soon in Court. ~~I~~ ^D have some very interesting questions to put ~~to~~ ^D one so wise.

RECORDED 55
WED

Sherman A. Carter

T-2

PROCEDURAL DUE PROCESS REQUIRES THAT AN INMATE WITH A CHALLENGE TO THE CALCULATION OF HIS RELEASE DATE PROMPTLY BE LISTENED TO BY SOMEONE HAVING AUTHORITY TO DECIDE THE CHALLENGE OR PASS IT ON FOR FURTHER REVIEW, AND DECISION.

"YOU SHOULD HAVE CALLED FOR HELP FROM SOMEONE WISER THAN YOURSELF."